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BY THE HOUSE OF DELEGATES,

March 5th, 1850.

Read and ordered to be printed.

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## REPORT

OF THE

MAJORITY OF THE COMMITTEE

ON

LOTTERIES,

TO WHICH WAS REFERRED THE PROCEEDINGS OF  
THE COMMISSIONERS.

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The committee on Lotteries, to which was referred the proceedings of the Commissioners of Lotteries, for the last two years, have had the same under consideration, and have given particular attention, to the most prominent facts thereof, being the contract entered into by those officers, with the approbation of the Governor in July last, for the drawing of the Consolidated Lotteries of Maryland, for three years, commencing on the 1st day of December, 1850.

This contract was made, by virtue of the act of 1846, chap. 118, and but for a stipulation, inserted by the Commissioners of Lotteries, out of abundant caution, reserving to the Legislature, the power to annul it, would have been beyond the reach of the General Assembly. The power, however, having been expressly reserved to the Legislature, to set it aside, and objections to its ratification having been made, it became the duty of the committee, to enquire particularly into its character, and the authority by which it was made,—no exception has been taken to the contract, by any of the State officers. The Commissioners of Lotteries are satisfied with it, the Governor has approved it, and no one else is vested by law, with any authority in the premises—but objections having been made, the committee have deemed it their duty to give a patient and attentive hearing to able and eloquent counsel as well on behalf of the present contractors, as the objectors, and have arrived at the conclusion, that these objections have not sufficient force to induce them to recommend the annulment of the contract by the Legislature. The first objection urged, was that no notice was given by the Commissioners of Lotteries, of their intention to make a contract, and that they (the objectors) were allowed no opportunity to bid. The committee, find that there is no act requiring a notice to be given by the Commissioners of Lotteries when about to make a contract, or directing them to advertise for proposals, the whole subject is confided to their discretion. So far as the committee have ascertained, the practice has been for the last 15 or 20 years, to make the contract, without giving any public notice whatever,—the only exception to the rule operated against the present contractors, and in favor of these now objecting to the contract, nor does it appear, that had a notice been given in this case, better terms would have been secured for the

State, than has been actually obtained,—the objectors having never up to this date, intimated to the committee, their willingness to give more than the present contractors have agreed to guarantee to the State.

Your committee, after an examination of all the acts of Assembly, relating so this subject, have come to the conclusion, that the law imposes only upon the Commissioners of Lotteries, the obligation to include in any contract, which they may make three stipulations: 1st. Payment of a certain sum for licenses, not less than 5,000 dollars. 2nd. The payment of 5 per cent. upon the sales of tickets, with the guaranty that such per centage shall not be less than 15,000 dollars; and 3rd. The payment of stamps on all tickets sold by the persons to whom such licenses are issued. The contract, now under consideration, contains each and all of these provisions, and the stipulation in regard to the per centage, is for the payment of 25,000 instead of 15,000 dollars, as required by law, and the contract contains the further stipulation, not required by law, that the stamps shall yield to the Treasury, at least 30,000 dollars.

It has been urged before the committee, that the per centage on sales required by the act of 1831, and the stamps on tickets prescribed by the Act of 1846, apply to sales made out of the State, and that a different construction has been given to the Acts of Assembly, by both parties to the contract.

If such were the construction of the laws, requiring the 5 per cent. and the stamps it would not have been necessary for the Commissioners, to insert their construction of the laws, into the contract. It is enough, that they have substantially used the language of the law in the contract, and such a course is the only safe one, in the opinion of the committee for public officers to pursue.

But the committee, are satisfied that the laws in question, were not meant to bear such a construction. The State of Maryland can grant no privileges, beyond its own borders, and though in every case, this limitation may not be expressed, it is always implied, this principle is sustained by Mr. Justice Story, in 1st Sumner's Reports, and the Supreme court of the United States, in the case of Cohens vs. the State of Virginia, in 6 Wheaton, have decided "that a grant by Congress to the Corporation of Washington of Lottery privileges did not look to their exercise beyond the District."

If a contrary construction was adopted, what would it involve? It is well known that in the greater part of the Union, indeed in almost the whole of its dealing in Lottery tickets, is either absolutely prohibited or restricted to such tickets as are issued by the authorities allowing their sale.

If our Legislation is to be held to take into view and stipulate as to sales of tickets wherever made beyond, as well as within our own territory, it will involve the State in the guilt of knowingly violating or sanctioning the violation of the laws of our sister States. No construction can be a sound one which draws

after it, such consequences, nor will it avail to say that the State is not responsible for the illegal acts of its contractors. If it share with them in the gains made by their breach of the laws of the other States of the Union, under cover of its license, the crime will be none the less because it is covered up. What a State may not do directly, it should no more than an individual do indirectly.

The suggestion made in argument that the contract being made in Maryland, which is valued by the *lex loci contractus* will be good every where overlooks the fact, that in reference to the sale of tickets abroad, charged to have been made—that the place of the contract, in reference to such tickets, is wherever they have been sold, and if invalid there, can have no validity any where.

It only remains to consider whether the contract is vitiated by its connexion with the proceedings which have taken place in regard to the Carroll county grant.

That grant took effect in the year 1848, the original law making it (1846 ch. 242) having been confirmed at the subsequent session of the General Assembly (1847 ch. 971) at the time it went into operation the contract now in course of execution had been entered into and it was not therefore in the power of the commissioners of Lotteries under the 14th section of the grant to put it into the contract. But the grantees were not without remedy on this account.

They were vested with full power to sell tickets and draw schemes and it was a serious question whether that power was not exercisable even pending the contract then in force though that contract stipulated as all had done since the act of 1831, that the contractors should have the monopoly of schemes and sales for the period embraced in it. The present contract itself therefore was endangered as the monopoly guaranteed by it would have been destroyed had the grantees pressed their power.

In this State of things, it was in the opinion of the committee, the duty of the Lottery Commissioners to consider in what way, they could best surmount the dangers impending over the revenue of the State by reason of the lottery grant conferred by the act of 1846 chapter 242.

It appears to the committee, very clearly, that if the commissioners named in the Carroll county grant, had insisted upon exercising the privilege which it is admitted in argument was conferred upon them, to draw the scheme authorised by the act of 1846, that the contract under which the State for the last two years has received \$76,000, and from which for the current year she will receive the like sum would be annulled and the State would thereby not only loose the sum to be received for the current year, but would have imposed upon her the obligation to indemnify the contractors for all losses sustained by them in consequence of the violation of the contract on her part.

By the contract of November '47 with D. Paine & Co., the exclusive privilege was conferred upon them of drawing all Maryland Lotteries for three years from the first of December, 1847,

and although, the 14th section of the act of 1846 chapter 242, authorise the commissioners of lotteries to place the Carroll county grant in any contract to be thereafter made for the drawing of the Consolidated Lotteries of Maryland, yet as the existing contract, to expire on the 1st of December, 1850, was entered into prior to the confirmation of the act of 1846, it is manifest to your committee, that the Lottery Commissioners were wisely provident of the interest of the State in the contract which they have made—for by so doing they have effectually guarded the revenue of the State so much endangered by the Carroll County Lottery grant,—they have secured for that grant the immediate enjoyment of all the rights intended to be conferred upon it by the legislature, they have preserved inviolate the present contract, and they have deprived the commissioners of the Carroll county grant of the power of destroying the revenue of the State, hereafter to be derived from this system.

The contract heretofore under consideration is not of value merely as raising a larger revenue, than has ever before been produced by the lottery system, but because it has saved the system from a most imminent danger which would have left the State exposed to all its evils without any of the benefits resulting from it.

It would be desirable therefore on every account not to disturb the contract, particularly as it would lay the State under a moral obligation to return the money which has been advanced upon it to the Commissioners of Lotteries for the Carroll county grant, amounting to \$12,000; provided it can be supported in law as strongly as it is sustained by expediency.

But one objection has been urged against it, that the Commissioners of Lotteries have no authority to put the Carroll county grant in the Consolidated Lotteries, and that the basis consequently of their whole action fails.

The committee think that the 14th section of the grant can mean nothing else than that the Commissioners should put the grant in the Consolidated system provided the consent of the Carroll Commissioners could be obtained.

For twelve years every private grant was made to take that direction, and the simple reference to the Commissioners of Lotteries, who are charged with no other duty, than that of drawing and managing the Consolidated Lotteries, would almost necessarily lead to the inference, that they were to embrace this grant with the rest, in their system.

There was no reason for making any exception in regard to it, and the direction to the Commissioners to include the sale of other tickets in the Carroll county grant in the next contract, is susceptible of no other reasonable construction. The only way of raising money under a Lottery privilege is by the sale of its tickets, and this privilege is the one which the grantees part with when it is embraced in the contract.

In what particular then when the sale of its tickets had passed to the contractor, would this grant differ from all the other consolidated grants.

'To give then to the Commissioners of Lotteries, this power; which puts this grant on a footing with the Consolidated Lotteries, and under the same management; was in effect, to give to the Commissioners the power to place the grant in the Consolidated Lotteries.

'The committee therefore, for the reasons assigned, and others which might be given if necessary, are of opinion,

1ST. That the Lottery Laws of this State, had regard only to sales within the State, when it directed the payment of five per cent on sales.

2ND. That the Stamp Act of 1845, had in view only such sales.

3RD. That the contract made in 1849, by the Commissioners of Lotteries with the approval of the Governor has been fairly and judiciously made, and ought not to be disturbed.

All of which is respectfully submitted,

GEO. C. MORGAN, Chairman.





